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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,082	07/11/2003	Dean Kamen	1062/D28	3609

2101 7590 12/07/2004  
BROMBERG & SUNSTEIN LLP  
125 SUMMER STREET  
BOSTON, MA 02110-1618

EXAMINER
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LERNER, AVRAHAM H

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/618,082

**Applicant(s)**

KAMEN ET AL.

**Examiner**

Avraham Lerner

**Art Unit**

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 1-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1004, 0104</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restriction***

1. Applicant's election without traverse of Group II, and species D in the reply filed on October 21, 2004 is acknowledged. In accordance with applicant's remarks, claims 1-29 have been withdrawn from consideration, and claims 30-32 are considered on their merits as being drawn to the elected invention and embodiment.

### ***Information Disclosure Statement***

2. The information disclosure statement filed January 29, 2004 has successfully inundated the Office with hundreds of references comprising thousands of pages of art that have, in the large majority, little or no relevance to the claimed invention. The references have been given a cursory review by the examiner, but if applicant wishes full consideration of any reasonable quantity, a list indicating those references having particular significance may be submitted.
3. The information disclosure statement filed January 29, 2004 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered. Further, regarding the Non-Patent Literature cited, as noted in the MPEP, section 609 III A(1), "Each publication must be identified by publisher, author (if any), title, relevant pages of the publication, and date and place of publication. The date of publication supplied must include at least the month and year of publication, except that the year of publication (without the month)

will be accepted if the applicant points out in the information disclosure statement that the year of publication is sufficiently earlier than the effective U.S. filing date and any foreign priority date so that the particular month of publication is not in issue.” Those citations not including either the publication month or an appropriate notation from applicant that the year of publication is sufficiently early as recited above in detail, have not been considered.

4. The Information Disclosure Statement, filed October 25, 2004, is acknowledged and has been considered.

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Kropf (U.S. Patent No. 5,135,063).

Kropf discloses a method of controlling a transporter comprising all elements as claimed, including causing a tilt of a pivot element having a handlebar (28), and commanding the motorized drive arrangement based on at least the tilt, the method further comprising “flexibly” coupling the pivot element to the support platform as broadly recited and to the extent that this structural limitation materially affects the claimed method for controlling a transporter.

7. Claims 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Nagamachi (U.S. Patent No. 5,657,828).

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Nagamachi discloses a method of controlling a transporter comprising all elements as claimed, including causing a tilt of a pivot element having a handlebar (107), and commanding the motorized drive arrangement based on at least the tilt, the method further comprising "flexibly" coupling the pivot element to the support platform as broadly recited and to the extent that this structural limitation materially affects the claimed method for controlling a transporter.

*Conclusion*

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Avraham Lerner whose telephone number is (703) 308-0423. The examiner can normally be reached on M-F (8:15-5:45) first Wednesday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**AVRAHAM LERNER**  
**PRIMARY EXAMINER**

*A. Lerner* 11/26/04

November 26, 2004